

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

IN RE DIGITEK®  
PRODUCT LIABILITY LITIGATION

MDL NO. 1968

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THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 32  
(Scope of discovery in putative class action  
pursuing economic claims only)

On July 27, 2009, the court conducted a telephone conference related to a discovery dispute arising in the deposition of plaintiff Peter J. Konek (2:08-cv-01053). Plaintiff Konek is the class representative in a putative class action alleging a variety of causes of action, including violation of Kansas's consumer protection laws, unjust enrichment, product liability, breach of warranty and other claims, all of which seek only economic damages and not damages related to personal injury. Counsel for plaintiff Konek, counsel on Plaintiffs' Steering Committee and counsel for Defendants participated in the telephone conference.

In the class action alleging economic harm only, Plaintiffs seek more than a refund because certain batches of Digitek® were recalled. The question of whether or not Digitek® was effective is a central issue in many of the claims raised in the class action; thus discovery of Plaintiffs' medical histories while using Defendants' product is relevant to Plaintiffs' proof of damages.

The court finds that Defendants are permitted to question Plaintiffs in the putative class action about their medical histories during the period from January 1, 2006, to August 25, 2008.

The Clerk is directed to file this Order in 2:08-md-1968 which shall apply to each member Digitek®-related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:09-cv-00846. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at [www.wvsd.uscourts.gov](http://www.wvsd.uscourts.gov).

ENTER: July 27, 2009

  
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Mary E. Stanley  
United States Magistrate Judge